

FILED WITH LRC TIME: <u>1 pm</u>
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Emily B Caudill REGULATIONS COMPILER

## STATEMENT OF EMERGENCY

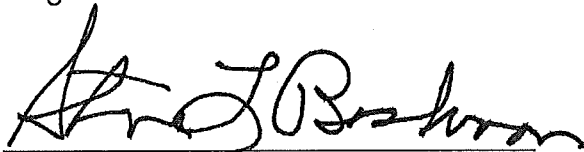
900 KAR 6:060E

(1) This emergency administrative regulation is being promulgated to establish the timetable for submission of Certificate of Need applications necessary for compliance with amendments to KRS 214B.450, which requires the cabinet to implement changes to the State Health Plan to develop Certificate of Need requirements for applications for Level I psychiatric residential treatment facilities and Level II psychiatric residential treatment facilities. Applicants must have a timetable within which to submit Level I psychiatric residential treatment facility and Level II psychiatric residential treatment facility certificate of need applications. An ordinary administrative regulation is not sufficient because the changes must be in place on October 13, 2010 when the amendments to KRS 216B.450 are effective.

(2) Failure to enact this administrative regulation on an emergency basis will compromise the Cabinet's ability to comply with the new requirements of KRS 216B.450 as applicants will not be able to submit Certificate of Need Applications for Level I psychiatric residential treatment facilities and Level II psychiatric residential treatment facilities. KRS 216B.450 allows the establishment of Level I psychiatric residential treatment facilities and Level II psychiatric residential treatment facilities to meet the treatment needs of children ages four (4) to twenty-one (21) who have an emotional disability, persistent aggressive behaviors, intellectual disability, sexually acting out behaviors, or development disability.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation.



Steve Beshear  
Governor

\_\_\_\_\_  
Date



Janie Miller, Secretary  
Cabinet for Health and Family Services

10/14/10  
Date

1 Cabinet for Health and Family Services

2 Office of Health Policy

3 (Emergency Amendment)

4 900 KAR 6:060E. Timetable for submission of certificate of need applications.

5 RELATES TO: KRS 216B.010, 216B.062, 216B.990

6 STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1,  
7 216B.062(1)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the  
9 Cabinet for Health and Family Services to administer Kentucky's Certificate of Need  
10 Program and to promulgate administrative regulations as necessary for the program.  
11 KRS 216B.062(1) and (2) require the cabinet to promulgate administrative regulations to  
12 establish timetables and batching groups for applications for certificates of need. This  
13 administrative regulation establishes the timetable for submission of application  
14 requirements necessary for the orderly administration of the Certificate of Need  
15 Program.

16 Section 1 Definitions. (1) "Cabinet" is defined by KRS 216B.015(5).

17 (2) "Certificate of Need Newsletter" means the monthly newsletter that is published  
18 by the cabinet regarding certificate of need matters and is available on the Certificate of  
19 Need Web site at <http://chfs.ky.gov/ohp/con>.

20 (3) "Formal review" means the review of applications for certificate of need which  
21 are reviewed within ninety (90) days from the commencement of the review as provided

by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(4) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer nursing home beds.

(5) "Nonsubstantive review" is defined by KRS 216B.015(17).

(6) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(7) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

Section 2. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and 900 KAR 6:075 shall be as established in this subsection:

(a) Public notice for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment, Level I psychiatric residential treatment facility (Level I PRTF), Level II psychiatric residential treatment facility (Level II PRTF), and new technological developments shall be provided on the third Thursday of the following months:

1. January; and

2. July.

(b) Public notice for residential hospice facilities, hospice agencies, and home health

1 agencies shall be provided on the third Thursday of the following months:

2 1. February; and

3 2. August.

4 (c) Public notice for ground ambulance providers, private duty nursing services,  
5 mobile services, and rehabilitation agencies shall be provided on the third Thursday of  
6 the following months:

7 1. March; and

8 2. September.

9 (d) Public notice for day health care programs, prescribed pediatric extended care  
10 facilities, and personal care beds shall be provided on the third Thursday of the  
11 following months:

12 1. April; and

13 2. October.

14 (e) Public notice for long-term care beds, acute care hospitals including all other  
15 State Health Plan covered services to be provided within the proposed acute care  
16 hospital, acute care hospital beds, psychiatric hospital beds, special care neonatal  
17 beds, comprehensive physical rehabilitation beds, chemical dependency beds, limited  
18 services clinics, ambulatory care centers, freestanding ambulatory surgical centers,  
19 outpatient health care centers, and birthing centers shall be provided on the third  
20 Thursday of the following months:

21 1. May; and

22 2. November.

23 (f) Public notice for intermediate care beds for mental retardation and

1 developmentally disabled facilities [~~and psychiatric residential treatment facilities~~  
2 (~~PRTF~~)] shall be provided on the third Thursday of the following months:

3 1. June; and

4 2. December.


5 (g) A proposal not included in paragraphs (a) through (f) of this subsection shall be  
6 placed in the cycle that the cabinet determines to be most appropriate by placing it in  
7 the cycle with similar services.

8 (2) In order to have an application deemed complete and placed on public notice, an  
9 application shall be filed with the cabinet at least fifty (50) calendar days prior to the  
10 date of the desired public notice.

900 KAR 6:060E

This is to certify that the Executive Director of the Office of Health Policy has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4)

APPROVED:



Carrie Banahan  
Executive Director  
Office of Health Policy

10/11/10

Date

APPROVED:



Janie Miller  
Secretary  
Cabinet for Health and Family Services

10/14/10

Date

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 900 KAR 6:060E

Contact Person: Carrie Banahan or Shane O'Donley, 564-9592

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Cabinet's timetable for submission of certificate of need applications. The amendment to this administrative regulation will recognize the creation of two additional licensure categories pursuant to 902 KAR 20:400 titled Level I Psychiatric residential treatment facility and Level II Psychiatric residential treatment facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statute, KRS 216B.010, 216B.062, and 216B.990.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.010, 216B.062, and 216B.990 by establishing the timetable for submission of certificate of need applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 216B.010, 216B.062, and 216B.990 by establishing the timetables for submission of certificate of need applications.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will assign Certificate of Need applications to establish Level I Psychiatric Residential Treatment Facilities and Level II Psychiatric Residential Treatment Facilities to a specific CON application batching cycle.

(b) The necessity of the amendment to this administrative regulation: The Office of the Inspector General filed an administrative regulation which creates a new licensure category. Since this category of service is not exempt by statute from CON requirements, the Office of Health Policy must assign this facility category to an appropriate batching cycle schedule. This amendment accomplishes that requirement.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to KRS 216B.062, applications for certificates of need shall be submitted according to timetables established by the cabinet by promulgation of administrative regulation, pursuant to the provisions of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: Promulgation of this amended administrative regulation under KRS Chapter 13A shall establish an appropriate batching cycle to assure that applications for Level I Psychiatric Residential Treatment Facilities and Level II Psychiatric Residential Treatment Facilities will be eligible for consideration at set intervals.

(3) List the type and number of individuals, businesses, organizations, or state

and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a certificate of need application to establish a Level I Psychiatric Residential Treatment Facility or a Level II Psychiatric Residential Treatment Facility.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: As the timetables set forth in the administrative regulation are currently established and operational, no new action will be required for regulated entities to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): As the timetables set forth in the administrative regulation are currently established and operational, no cost will be incurred by regulated entities to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will provide potential health care providers with a mechanism to establish Level II psychiatric residential treatment facility in compliance with KRS 216B.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs will be incurred to implement this regulation as we already utilize these timetables as part of our normal operations.

(b) On a continuing basis: No additional costs will be incurred to implement this regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this administrative regulation will be from Office of Health Policy's existing budget. As stated above, the timetables are already used as part of our normal operations so no additional funding will be required:

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? (explain why or why not) Tiering is not applicable as compliance with this administrative regulation applies equally to all



individuals or entities regulated by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 900 KAR 6:060E

Contact Person: Carrie Banahan or  
Chandra Venettozzi

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No       

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects the Office of Health Policy within the Cabinet for Health and Family Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.062, 216B.990.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):      Expenditures (+/-):      Other Explanation: